



COMMONWEALTH OF KENTUCKY  
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**22-ORD-199**

September 29, 2022

In re: Anthony Sadler/Little Sandy Correctional Complex

**Summary:** The Little Sandy Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it did not provide copies of e-mails to which it does not have access.

***Open Records Decision***

On August 29, 2022, inmate Anthony Sadler (“Appellant”) asked the Complex to provide copies of four e-mails sent to the Appellant from the deputy warden of Northpoint Training center in July and September 2020 through the JPay electronic messaging system. In a timely response, the Complex stated that it could not access the messages because it could only retrieve JPay messages for the preceding six months and there were no copies of the messages in the Appellant’s inmate file.<sup>1</sup> This appeal followed.

JPay is a contractor that facilitates e-mail correspondence with inmates at Kentucky’s correctional facilities. While inmates’ e-mails from private persons on the JPay system are generally not considered public records, correspondence from correctional staff is a public record under KRS 61.870(2) because it is used by a public agency. *See* 20-ORD-109. On appeal, the Complex reiterates that it cannot access JPay messages older than six months and the Appellant has requested messages exchanged two years ago. The Complex also states it does not have access to messages from staff at other institutions, such as Northpoint Training Center.

A public agency “is responsible only for those records within its own custody or control.” *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136

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<sup>1</sup> Although the Complex’s response stated that it “does possess the requested records,” the Complex has clarified on appeal that it should have stated it “does not possess the requested records.”

(1980)). Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that it does possess the requested records. See *Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005).

The Appellant asserts that he previously viewed the messages at Northpoint Training Center and can currently view them on his own JPay account. However, this is not sufficient to establish a *prima facie* case that the Complex can access the messages. This Office has recognized that a correctional institution does not violate the Act when it does not produce JPay materials to which it does not have access. See, e.g., 18-ORD-217. Accordingly, the Complex did not violate the Act.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
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s/James M. Herrick  
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Distributed to:

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